refused leave to amend the bankruptcy notice whereupon counsel for the creditor company asked for leave to withdraw the petition, to which I acceded.

Order accordingly.

Solicitors: *William W.N. Lai & Co.*

GOH TENG HOON & ORS. v. CHOI HON CHING

[O.C.J. (Sinnathuray J.) August 19, 1986]

[Singapore – Motion in D.C.A. No. 13 of 1986]

Practice and Procedure – Security for costs – Whether Subordinate Courts Rules 1986, O.1 r.2 applies to appeals under O.54 r.3 – Subordinate Courts Rules 1970, O.49 r.3 – Subordinate Courts Rules, 1986, O.1 r.2(2) & O.54 r.3.

Practice and Procedure – Security for costs – Whether $1,000 under the 1970 Rules or $1,500 under the 1986 Rules – One notice of appeal for more than one appellant – One set of costs notwithstanding more than one appellant.

District Court – Appeal from District Court to High Court – District Court functus officio – Whether appeal a proceeding "pending" in the District Court – Subordinate Courts Rules 1986, O.54 r.3.

On March 31, 1986 judgment was pronounced in the District Court against the defendants now the appellants under the Notice of Appeal dated April 11, 1986. The appellants filed their Notice of Appeal on that day and paid in as security for costs a sum of $1,000.00. On objection taken by the respondent, on April 29, 1986 the appellants paid in a further sum of $500.00 (making a total of $1,500) as security for costs in respect of the appeal.

The issues before the court were as follows:–

(1) whether the appellants have to pay security for costs of $1,000 under the 1970 Rules or $1,500 under the 1986 Rules for their appeal from the District Court action;

(2) where there is more than one appellant in a notice of appeal, whether security for costs should be provided by each of the appellants.

Held: (1) once a District Court has given judgment, except for matters relating to execution of the judgment, the District Court is *functus officio* and there can be no issue before it on which it had earlier exercised its jurisdiction;

(2) an appeal from the District Court to the High Court is not a proceeding "pending" in the District Court under the transitional provision of the 1986 Rules. The 1986 Rules apply and the security for costs is $1,500 on the notice of appeal filed by the appellants in respect of their appeal from the District Court to the High Court;

(3) a notice of appeal can have more than one appellant, and it is not required that there should be a separate notice of appeal for each appellant;

(4) under Order 54 rule 3(1), security for costs on a notice of appeal from a District Court action is $1,500, notwithstanding that there is more than one appellant;

(5) in the present case, there were good grounds to give an extension of time to the appellants.

[*Obiter Dictum:* Rules of Court must be applied towards saving of costs for litigants and not increasing the costs of litigation.]

Case referred to:

(1) *Yap Chin Fook* v. *Thean Lip Thoong* (1922), 5 F.M.S.L.R. 1.

MOTION.

Liu Yuen Ming for the applicant/respondent.

Rajan S. Nair for the respondents/appellants.

Cur. Adv. Vult.

Sinnathuray J.: This notice of motion taken out by the respondent raises two practical matters relating to civil litigation. They both arise from the coming into force of the Subordinate Courts Rules, 1986 ("the 1986 Rules") though the second one could also arise under the Subordinate Courts Rules, 1970 ("the 1970 Rules").

In the motion it is sought that –

(1) the certificate for security for costs and notice of appeal filed by the appellants on April 11, 1986 be set aside;

(2) the certificate for security for costs filed by the appellants on April 29, 1986 be set aside;

(3) costs be provided in respect of this application.

The relevant facts are that on March 31, 1986, judgment was pronounced in the District Court in District Court Summons No. 1810 of 1983 against the defendants, now the appellants under the Notice of Appeal dated April 11, 1986. On that day when the appellants filed their Notice of Appeal they paid in as security for costs a sum of $1,000.00. Later, on objection taken by the respondent, on April 29, 1986 the appellants paid in a further sum of $500.00 making a total of $1,500 as security for costs in respect of the appeal.

The 1986 Rules came into force on March 1,

1986. Order 1 Rule 2 makes provisions for transitional and other matters. Order 1 Rule 2(2) provides as follows:

"(2) The Subordinate Courts Rules, 1970, shall continue to apply to any proceedings pending on the day these Rules come into force, unless at any stage of the proceedings the Court on its own motion or by application otherwise directs."

The matter for consideration is whether this transitional provision applies to appeals which are dealt with in Order 54, in particular to Rule 3 of that Order which deals with security for costs. It reads as follows:

"3.(1) The appellant must at the time of filing the notice of appeal deposit a sum of $1,000 for Magistrate Court actions and $1,500 for District Court actions by way of security for the respondent's costs of the appeal in the Registry or with the Accountant-General and obtain a certificate in Form 107.

(2) The High Court may at any time, in any case where it thinks fit, order further security for costs to be given."

Under the 1970 Rules, in Order 49 Rule 3, the security for costs was $1,000. The question now is whether the appellants have to pay security for costs of $1,000 under the 1970 Rules or $1,500 under the 1986 Rules for their appeal from the District Court action. The answer to it depends on the meaning to be given to the phrase "proceedings pending" in Order 1 Rule 2(2) of the 1986 Rules.

It would appear that there is no reported authority directly to the point on the word "pending" in respect of an appeal from one court to another. Some assistance is to be had in *Stroud's* Judicial Dictionary on the meaning given to the word "pending." The first illustration explains that "a legal proceeding is pending as soon as commenced, and until it is concluded, *i.e.* so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein." It seems to me that a clear distinction has to be made between an appeal from a judgment and those other steps taken by way of execution of the judgment. On this, there is another illustration in *Stroud's* Judicial Dictionary:

"As to what is a cause or proceeding 'pending' within Judicature Act 1873, now Judicature Act 1925, a cause is 'pending' even after final judgment, so long as such judgment remains unsatisfied ..."

In this context, I agree with Mr. Liu for the respondent that garnishee proceedings are pending proceedings just as execution by way of writs are also pending proceedings.

Having regard to what I have said, I am of the view that once a District Court has given judgment, except for matters relating to execution of the judgment, the District Court is *functus officio* and there can be no issue before it on which it had earlier exercised its jurisdiction. It follows that an appeal from the District Court to the High Court, is not a proceeding "pending" in the District Court under the transitional provision of the 1986 Rules. I accordingly rule that in this case the 1986 Rules apply and the security for costs is $1,500 on the notice of appeal filed by the appellants in respect of their appeal from the District Court to the High Court.

The main argument on the notice of motion is of some importance to practitioners. The submission for the respondent is that where there is more than one appellant in a notice of appeal, there should be security for costs provided by each of the appellants. Counsel urges upon me that if the notice of appeal has three appellants, then the security for costs must be thrice the amount of that stated in the Rules.

In the present appeal, it is not in dispute that there are altogether five appellants though in the notice of appeal there is the first appellant and the second appellants are described as "The occupiers of No 15 Still Road." Mr. Liu for the respondent argues that under Order 54 Rule 3(1) of the 1986 Rules, there should be security for costs in the sum of $7,500 from the appellants and not $1,500 that has now been lodged by the appellants. The argument in the written submission is at first sight an attractive one. Suffice it to say, I have given careful consideration to it but have come to the conclusion that I cannot accede to it for more than one reason.

First, I look at the scheme of Order 54. Rule 1 deals with the notice of appeal. It provides the form for the notice of appeal; it states that notice of appeal may be given in respect of the whole or any specified part of the judgment complained of; and it specifies that the notice must contain an address of service, and be signed by the appellant or his solicitors. When the notice of appeal is filed, the Registrar will assign a number to the notice of appeal and he will enter the appeal on the list of appeals. The notice of appeal must be served on all parties to the proceedings who are directly affect-

ed by the appeal. Under Rule 2, there is a time limit within which the notice of appeal must be filed. As I read these two Rules in Order 54, it seems to me that a notice of appeal can have more than one appellant, and it is not required that there should be a separate notice of appeal for each appellants.

Next, there is the Rule in Order 54 which I referred to earlier on security for costs. Rule 3(1) states that the appellant must at the time of filing the notice of appeal deposit a sum of, in the case of an appeal from the District Court, $1,500 by way of security for *the respondent's costs* (my emphasis) of the appeal. Again, it seems to me that if it was the intention of the Rules Committee that for each appellant in a notice of appeal there should be $1,500 by way of security for the respondent's costs, then Rule 3(1) would be drafted differently to state specifically to that effect.

The second reason why I say for one notice of appeal there should be $1,500 irrespective of the number of appellants is that that has been the practice all along. I am grateful to Mr. Liu who has traced the history of Rule 3(1) from its inception in the Civil Appeals Ordinance, 1893. It appears that the rule is of local origin. It would also appear that, except for the case of *Yap Chin Fook* v. *Thean Lip Thoong*[1] which dealt with further security for costs, there is no reported decision on the rule.

The third reason I would venture to give and this is related to both intention and practice is that under Rule 3(2) the High Court may from time to time order further security for costs to be given. By this provision, where in any case a respondent considers that the security for costs given under Rule 3(1) is insufficient, he can apply to the High Court for further security for costs.

Finally, I also bear in mind, that in one notice of appeal, though there may be several appellants, they would be represented by one solicitor and if it should happen that costs are given against the respondent, he has only to pay one set of costs. Here, I would observe that Rules of Court must be applied towards saving of costs for litigants and not increasing the costs of litigation. Of course, I accept the submission of Mr. Liu that the Rules are also designed to prevent frivolous appeals, but those must be rare occasions.

For the reasons I have given, I rule that under Order 54 Rule 3(1), security for costs on a notice of appeal from a District Court action is $1,500, notwithstanding that there is more than one appellant.

There is one other matter in this motion that I have to deal with. The solicitors for the appellants on their interpretation of the transitional provision as it affects the 1986 Rules paid $1,000 by way of security for costs when they filed their notice of appeal on April 11, 1986. On April 29, 1986, they paid a further sum of $500. By that time, however, the appellants were out of time as regards the appeal as they had not furnished the security for costs within 14 days from the date of the judgment. It is urged upon me by counsel for the respondent that I should not exercise my discretion and extend time. He draws my attention to the views of Judges in the past, that there must be strict compliance with the Rules. I would say that not only have the views of Judges changed, the Rules of Court have changed as well. The Rules are there for the orderly conduct of civil proceedings and in each case when an application is made for the exercise of discretion it must be considered on its own merits. In this case, on the arguments I have dealt with there are good grounds for me to extend time. In the exercise of my discretion, I give an extension of time to the appellants to April 29, 1986, the date of the payment of the further security of $500, so that the appellants on that date compiled with Order 54 Rule 3.

There only remains the question of costs. Mr Nair says the appellants should not be penalised in costs, but he has not assisted me to say what order I should make. Mr Liu, on the other hand, has argued that if he succeeds he should have costs. He has not said anything otherwise. I have come to the conclusion that a just order on this motion is that there will be no order as to costs.

Order accordingly.

Solicitors: *Lim Ganesh & Liu; J.B. Jeyaretnam & Co.*